

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRENDA TOLBERT,	§	
	§	
Plaintiff	§	
	§	No. 4:11-CV-107
v.	§	
	§	Judge Keith P. Ellison
RBC CAPITAL MARKETS	§	
CORPORATION n/k/a RBC CAPITAL	§	
MARKETS, LLC, ET AL.,	§	
	§	
Defendants.	§	

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants RBC Capital Markets Corporation, RBC Centura Bank, and RBC U.S. Insurance Services, Inc. (collectively "Defendants") respectfully submit this Notice of Supplemental Authority in Support of their Motion for Summary Judgment (Dkt. No. 91) and their Response to Plaintiffs' Motion for Partial Summary Judgment (Dkt. No. 92).

On October 29, 2012, the United States District Court for the Eastern District of Kentucky issued a decision applying and interpreting ERISA's "top hat" provisions. *See Cramer v. Appalachian Reg'l Healthcare, Inc.*, No. 5:11-49-KKC, 2012 WL 5332471 (E.D. Ky. Oct. 29, 2012) (attached hereto as Exhibit A). This decision is relevant to several of Defendants' summary judgment arguments regarding ERISA's top hat requirements, specifically at pages 29 to 32 (the selectivity requirement); pages 32 to 35 (the highly compensated requirement); and pages 35 to 36 (the plan language factor) (Dkt. No. 91). The *Cramer* decision is also pertinent to Defendant's arguments in response to Plaintiffs' Motion for Partial Summary Judgment, specifically at pages 29 to 33 (the selectivity requirement); pages 33 to 42 (the highly

compensated requirement); pages 42 to 44 (the plan language factor); and pages 44 to 47 (arguing that there is no “substantial influence” element) (Dkt. No. 92). Defendants therefore submit this decision as additional authority in support of those filings.

Respectfully submitted,

RBC Capital Markets Corporation; RBC Capital Markets, LLC; RBC Centura Bank; and RBC U.S. Insurance Services, Inc.

by: s/ Matthew A. Russell

Alison J. Gates
TX State Bar No.24055535
Federal ID No. 706309
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana, Suite 4200
Houston, Texas 77002
713.890.5157 (Telephone)
713.890.5001 (Facsimile)

Sari M. Alamuddin (*admitted pro hac vice*)
Ill. State Bar No. 6215689
Christopher J. Boran (*admitted pro hac vice*)
Ill. State Bar No. 6282552
Matthew A. Russell (*admitted pro hac vice*)
Ill. State Bar No. 6290632
MORGAN, LEWIS & BOCKIUS LLP
77 West Wacker Drive, Fifth Floor
Chicago, Illinois 60601
312.324.1000 (Telephone)
312.323.1001 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent to counsel of record through the Court's CM/ECF system on November 12, 2012, as follows:

Mr. Geoffrey H. Bracken
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, Texas 77002-5007

Mr. William G. Whitehill
Mr. Joe B. Harrison
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201

s/ Matthew A. Russell